

ENQUIRY

Into the Measures of

SUBMISSION

To the

SUPREAM AUTHORITY:

*And of the Grounds upon which it may be Law-
ful or necessary for Subjects, to defend their Religion,
Lives and Liberties.*

By Gilbert Burnet.

THis Enquiry cannot be regularly made, but by taking in the first place, a true and full view of the nature of *Civil Society*, and more particularly of the nature of *Supream power*, whether it is lodged in one or more persons?

I. It is certain, that the *law of nature* has put no difference nor subordination among men, except it be that of *Children* to *parents* or of *wives* to their *husbands*, so that with relation to the law of nature, all men are born free: and this liberty must still be supposed entire, unless so far as it is limited by *Contracts*, *Provisions*, or *Laws*. For a man can either bind himself to be a servant, or sell himself to be a Slave, by which he becomes in the power of another, only so far as it was provided by the Contract: since all that liberty which was not expressly given away, remains still entire: so that the plea for liberty always proves it self, unless it appears that it is given up or limited by any special agreement.

II. It is no less certain, that as the light of nature has planted in all men a natural principle of the love of life, and of a de-

sire to preserve it; so the common principles of all Religion agree in this, that God having set us in this world, we are bound to preserve that being, which he has given us, by all just and lawful ways. Now this duty of self-preservation, is exerted in Instances of two sorts; the one are, in the resisting of Violent Aggressors; the other are the taking of just revenges of those, who have invaded us so secretly, that we could not prevent them, and so Violently that we could not resist them: in which cases the principle of self-preservation warrants us, both to recover what is our own, with just damages, and also to put such Injust persons out of a Capacity of doing the like injuries any more either to our selves, or to any others. Now in these two Instances of self-preservation, this difference is to be observed; that the first cannot be limited, by any slow forms, since a pressing danger requires a vigorous repulse; and cannot admit of delays; whereas the second, of taking revenges, or reparations, is not of such hast, but that it may be brought under rules and forms.

III. The true and Original Notion of *Ci-*

vil Society and Government is, that it is a Compromise made by such a body of men, by which they resign up the right of demanding reparations, either in the way of Justice, against one another, or in the way of War, against their neighbours; to such a single person, or to such a body of men as they think fit to trust with this. And in the management of this *Civil Society* great distinction is to be made, between the power of making laws for the regulating the conduct of it, and the power of executing those laws: The *Supream authority* must still be supposed to be lodged with those who have the *Legislative* power reserved to them; but not with those who have only the *Executive*; which is plainly a *trust*, when it is separated from the *Legislative* power; and all *Trusts* by their nature import, that those to whom they are given, are accountable, even tho that it should not be expressly specified in the words of the *Trust* it self.

IV. It cannot be supposed; by the principles of *Natural Religion*, that God has authorised any one *form of Government*, any other way than as the general rules of order, and of Justice, oblige all men not to subvert Constitutions, nor disturb the peace of Mankind, or invade those rights with which the law may have vested some persons; for it is certain, that as private Contracts lodge or transmute private rights; so the *publick laws* can likewise lodge such Rights, Prerogatives and Revenues, in those, under whose Protection they put themselves, and in such a manner that they may come to have as good a Title to these, as any private person can have to his property: so that it becomes an act of high Injustice and Violence, to invade these: which is so far a greater sin than any such actions would be, against a private person, as the publick peace and order is preferable to all private considerations whatsoever. So that in truth, the principles of *Natural Religion*, give those that are in Authority, no power at all, but they do only secure them in the possession of that which is

theirs by Law. And as no considerations of Religion can bind me to pay another more than I indeed owe him, but do only bind me more strictly to pay what I owe; so the considerations of Religion do indeed bring *subjects* under stricter obligations, to pay all due Allegiance and submission to their *Princes*, but they do not at all extend that Allegiance further than the Law carries it. And tho a man has no divine right to his property, but has acquired it by human means, such as succession, or Industry, yet he has a security for the enjoyment of it, from a Divine right; so tho *Princes* have no Immediate warrants from heaven, either for their Original Titles, or for the extent of them, yet they are secured in the possession of them by the Principles and Rules of *Natural Religion*.

V. It is to be considered, that as a private person, can bind himself to another mans service, by different degrees, either as an Ordinary servant for wages, or as one appropriated for a longer time as an Apprentice, or by a total giving himself up to another, as in the case of slavery; in all which cases the General name of *Master* may be equally used, yet the degrees of his power, are to be judged by the nature of the Contract; so likewise bodies of men can give themselves up in different degrees, to the conduct of others: and therefore tho all those may carry the same name of *King*, yet every ones power is to be taken from the measures of that Authority which is lodged in him, and not from any general speculations founded on some Equivocal termes, such as *King*, *Sovereigne*, or *Supream*.

VI. It is certain, that God, as the Creator and Governour of the World, may set up whom he will, to rule over other men; But this declaration of his will, must be made evident by Prophets, or other Extraordinary men sent of him, who have some manifest proofs of the Divine authority that is committed to them, on such occasions, and upon such persons declaring the will of God, in favour of any others, that Declaration is to be submitted

mitted to, and obeyed. But this pretence of a divine Delegation, can be carried no further than to those who are thus expressly marked out, and is unjustly claimed by those who can prove no such Declaration to have been ever made in favour of them, or their families. Nor does it appear reasonable to conclude from their being in possession, that it is the will of God that it should be so, this justifies all Usurpers when they are successful.

VII. The measures of *power*, and by consequence of *Obedience*, must be taken from the express Laws of any state, or body of men, from the Oaths that they swear, or from Immemorial Prescription and a long Possession, which both give a Title, and in a long tract of time make a bad one become good, since Prescription when it passes the Memory of man, and is not disputed by any other Pretender, gives by the common sense of all men a just and good Title: so upon the whole matter, the degrees of all Civil Authority, are to be taken either from Express Laws, Immemorial Customes, or from particular Oathes, which the subjects swear to their Princes: this being still to be laid down for a principle, that in all the disputes between *power* and *liberty*, *power* must always be proved, but *liberty* proves it self; the one being founded only upon positive Law, and the other upon the Law of nature.

VIII. If from the General Principles of humane society, and natural Religion, we carry this matter to be examined by the Scriptures, it is clear that all the passages that are in the *Old Testament*, are not to be made use of in this matter, of neither side. For as the land of *Canaan*, was given to the *Jews* by an Immediate grant from heaven, so God reserved still this to himself, and to the Declarations that he should make from time to time, either by his Prophets, or by the Answers that came from the Cloud of Glory that was between the Cherubims, to set up Judges or Kings over them, and to pull them down again as he thought fit. Here was an express Delegation made by God,

and therefore all that was done in that Dispensation, either for or against Princes, is not to be made use of in any other state, that is founded on another bottom and Constitution: and all the expressions in the *Old Testament* relating to *Kings*, since they belong to persons that were immediately designed by God, are without any sort of reason applied to those, who can pretend to no such designation, neither for themselves nor for their Ancestors.

IX. As for the *New Testament*, it is plain, that there are no rules given in it, neither for the forms of Government in General, nor for the degrees of any one form in particular, but the general rules of Justice, Order and Peace being established in it upon higher motives and more binding considerations, than ever they were in any other Religion whatsoever, we are most strictly bound by it, to observe the Constitution in which we are; and it is plain, that the rules set us in the Gospel, can be carried no further. It is indeed clear from the *New Testament*, that the *Christian Religion* as such, gives us no grounds to defend or propagate it by force. It is a doctrine of the Cross, and of Faith, and patience under it: and if by the order of Divine Providence, and of any Constitution of Government, under which we are born, we are brought under sufferings, for our professing of it, we may indeed retire and fly out of any such Countrey, if we can; but if that is denied us, we must then according to this Religion, submit to those sufferings, under which we may be brought, considering that God will be glorified by us in so doing, and that he will both support us under our sufferings, and gloriously reward us for them.

This was the state of the *Christian Religion* during the three first Centuries under Heathen Emperours, and a Constitution in which *Paganisme* was established by law. But if by the lawes of any Government, the *Christian Religion*, or any form of it, is become a part of the subjects property, it then falls under another

consideration, not as it is a Religion, but as it is become one of the principal rights of the subjects, to believe and profess it: and then we must judge of the Invasions made on that, as we do of any other Invasion, that is made on our other Rights.

X All the passages in the New Testament that relate to Civil Government, are to be expounded as they were truly meant, in opposition to that false Notion of the Jews, who believed themselves to be so Immediately under the Divine authority, that they could not become the subjects of any other power; particularly of one that was not of their Nation or of their Religion: therefore they thought, they could not be under the Roman yoke, nor bound to pay tribute to Cesar, but judged that they were only subject out of fear, by reason of the force that lay on them, but not for Conscience sake: and so in all their dispersion, both at Rome and elsewhere, they thought they were Gods freemen, and made use of this pretended liberty as a cloak of maliciousness. In opposition to all which, since in a Course of many years, they had asked the protection of the Roman yoke, and were come under their authority, our Saviour ordered them to continue in that, by his saying, *Render to Cesar that which is Cessars*; and both St. Paul in his Epistle to the Romans, and St. Peter in his General Epistle, have very positively condemned that pernicious maxim; but without any formal Declarations made of the rules or measures of Government. And since both the people and senate of Rome had acknowledged the power that Augustus had indeed violently usurped, it became legal when it was thus submitted to, and confirmed both by the senate and people: and it was established in his family by a long Prescription, when those Epistles were writ: so that upon the whole matter, all that is in the New Testament upon this subject, Imports no more, but that all Christians are bound to acquiesce in the Government, and submit to it, according to the Constitution that is settled by law.

XI. We are then at last brought to the Constitution of our English Government: so

that no General Considerations from speculations about Sovereign power, nor from any passages either of the Old and New Testament, ought to determine us in this matter; which must be fixed from the Laws and Regulations that have been made among us. It is then certain, that with Relation to the Executive part of the Government, the Law has lodged that singly in the King; so that the whole administration of it is in him: but the legislative power is lodged between the King and the Two Houses of Parliament; so that the power of making and repealing laws, is not singly in the King, but only so far as the Two Houses concur with him. It is also clear, that the King has such a determined extent of Prerogative, beyond which he has no authority: as for Instance, if he levys money of his people, without a law empowering him to it, he goes beyond the limits of his power, and asks that to which he has no right: so that there lies no obligation on the subject to grant it: and if any in his name use Violence for the obtaining it, they are to be looked on as so many robbers; that Invade our property, and they being Violent aggressours, the principle of self preservation seems here to take place, and to warrant as Violent a resistance.

XII. There is nothing more Evident, then that England is a free Nation, that has its liberties and Properties reserved to it, by many positive and express laws: if then we have a right to our property, we must likewise be supposed to have a right to preserve it: for those rights are by the law secured against the Invasions of the Prerogative, and by consequence we must have a right to preserve them against those Invasions. It is also evidently declared by our Law, that all orders and warrants, that are issued out in opposition to them, are null of themselves; and by Consequence, any that pretend to have Commissions from the King, for those ends, are to be considered as if they had none at all: since those Commissions being void of themselves, are indeed no Commissions in the Construction of the Law; and

and therefore those who act in vertue of them, are still to be considered, as private persons who come to invade and disturb us. It is also to be observed, that there are some points that are justly disputable and doubtful, and others that are so manifest, that it is plain that any Objections that can be made to them, are rather forced pretences, than so much as plausible colours. It is true, if the case is doubtful, the Interest of the Publick Peace and Order, ought to carry it; but the case is quite different when the Invasions that are made upon *Liberty* and *Property*, are plain and visible to all that consider them.

XIII. The main and great difficulty here, is, that tho our Government does indeed assert the *Liberty of the Subject*, yet there are many express *Laws* made, that lodge the *Militia* singly in the *King*, that make it plainly unlawful upon any pretence whatsoever to take Armes against the *King*, or any Commissioned by him: and these *Laws* have been put in the form of an *Oath*, which all that have born any Employment either in Church or State have sworn: and therefore those *Laws*, for the assuring our *Liberties*, do indeed bind the *Kings* Conscience, and may affect his Ministers; yet since it is a Maxim of our Law, that the *King can do no wrong*, these cannot be carried so far as to justify our taking Armes against him, be the transgressions of Law ever so many and so manifest: and since this has been the constant *Doctrine* of the *Church of England*, it will be a very heavy Imputation on us, if it appears, that tho we held those Opinions, as long as the Court and the Crown favoured us, yet as soon as the Court turns against us, we change our principles.

XIV. Here is the true Difficulty of this whole Matter, and therefore it ought to be exactly considered: First, All general Words, how large soever, are still supposed to have a tacite exception, and reserve in them, if the Matter seems to require it. Children are commanded to obey their Parents in *all things*: Wives are declared by the Scripture, to be subject to their Husbands in *all things*, as the Church is unto Christ:

and yet how Comprehensive soever these words may seem to be, there is still a reserve to be understood in them; and tho by our Form of Marriage, the Parties swear to one another *till Death them do part*, yet few doubt but that this Bond is dissolved by Adultery, tho it is not named; for odious things ought not to be suspected, and therefore not named upon such occasions: but when they fall out, they carry still their own force with them. 2. When there seems to be a Contradiction between two Articles in the Constitution, we ought to examin which of the two is the most Evident, and the most Important, and so we ought to fix upon it, and then we must give such an accommodating sense to that which seems to contradict it, that so we may reconcile those together. Here then are two seeming Contradictions in our Constitution: the one is the *Publick Liberty* of the Nation; the other is the Renouncing of all *Resistance*, in case that were invaded. It is plain, that our *Liberty* is only a thing that we enjoy at the *Kings* Discretion, and during his Pleasure, if the other against all Resistance is to be understood according to the utmost extent of the Words. Therefore since the chief Design of our whole Law, and of all the several Rules of our Constitution, is to secure and maintain our *Liberty*, we ought to lay that down for a Conclusion, that it is both the most plain and the most Important of the two: and therefore the other Article against *Resistance* ought to be so softened, as that it do not destroy this. 3. Since it is by a Law that *Resistance* is condemned, we ought to understand it in such a sense as that it does not destroy all other Laws: and therefore the intent of this Law, must only relate to the *Executive Power*, which is in the *King*, and not to the *Legislative*, in which we cannot suppose that our Legislators, who made that Law, intended to give up that, which we plainly see they resolved still to preserve entire, according to the Ancient Constitution. So then, the not resisting the *King*, can only be applied to the *Executive Power*, that so upon no pretence of Ill Administrations

tions in the Execution of the Law, it should be lawful to resist him; but this cannot with any reason be extended to an Invasion of the *Legislative Power*, or to a total *Subversion of the Government*. For it being plain, that the *Law* did not design to lodge that Power in the *King*, it is also plain, that it did not intend to secure him in it, in case he should set about it. 4. The *Law* mentioning the *King*, or those *Commissionated* by him, shews plainly, that it only designed to secure the *King* in the Executive Power: for the word *Commission* necessarily imports this, since if it is not according to *Law*, it is no *Commission*; and by Consequence, those who act in virtue of it, are not *Commissionated* by the *King* in the Sense of the *Law*. The *King* likewise Imports a Prince clothed by *Law* with the Regal Prerogative; but if he goes to *Subvert* the whole Foundation of the Government, he *Subverts* that by which he himself has his Power, and by consequence he annuls his own Power; and then he ceases to be *King*, having endeavoured to destroy that, upon which his own Authority is founded.

XV. It is acknowledged by the greatest Assertors of Monarchical Power, that in some cases a *King* may fall from his Power, and in other cases that he may fall from the Exercise of it. His Deserting his People, his going about to enslave, or sell them to any other, or a furious going about to destroy them, are in the opinion of the most Monarchical Lawyers, such Abuses, that they naturally divest those that are guilty of them, of their whole Authority. *Infancy* or *Phrenzy* do also put them under the Guardianship of others. All the Crowned Heads of *Europe* have, at least secretly, approved of the putting the late *King of Portugal* under a Guardianship, and the keeping him still Prisoner for a few Acts of Rage, that had been fatal to a very few Persons: and even our *Court* gave the first countenance to it, tho of all others the late *King* had the most reason to have done it at least last of all: since it justified a younger Brother's supplanting the Elder; yet the evidence of the thing carried it e-

ven against Interest. Therefore if a *King* goes about to subvert the Government, and to overturn the whole Constitution, he by this must be supposed either to fall from his Power, or at least from the Exercise of it, so far as that he ought to be put under Guardians; and according to the case of *Portugal*, the next *Heir* falls naturally to be the *Guardian*.

XVI. The next thing to be considered, is to see in Fact whether the Foundations of this Government have been struck at, and whether those Errors, that have been perhaps committed, are only such Malversations, as ought to be Imputed only to Human Frailty, and to the Ignorance, Inadvertences, or Passions to which all Princes may be subject, as well as other men. But this will best appear if we consider what are the Fundamental Points of our Government, and the chief Securities that we have for our Liberties.

The Authority of the *Law* is indeed all in one word, so that if the *King* pretends to a power to *Dispence* with *Laws*, there is nothing left, upon which the *State* can depend; and yet as if *Dispencing Power* were not enough, if *Laws* are wholly suspended for all time coming, this is plainly a repealing of them, when likewise the men, in whose hands the Administration of Justice is put by *Law*, such as *Judges* and *Sheriffs*, are allowed to tread all *Laws* under foot, even those that Infer an Incapacity on themselves if they violate them; this is such a breaking of the whole Constitution, that we can no more have the Administration of Justice, so that it is really a *Dissolution* of the Government: since all Tryals, Sentences, and the Executions of them, are become so many unlawful Acts, that are null and void of themselves.

The next thing in our Constitution, which secures to us our *Laws* and *Liberties*, is a free and Lawful Parliament. Now not to mention the breach of the *Law of Triennial Parliaments*, it being above three years since we had a Session that enacted any *Law*; Methods have been taken, and are daily a taking, that render this Impossible. *Parliaments* ought to be chosen with

an entire Liberty, and without either Force or Pre-ingenagements: whereas if all men are required before hand to enter into Engagements, how they will Vote, if they are chosen themselves, or how they will give their Voices in the Electing of others? This is plainly such a preparation to a Parliament, as would indeed make it no Parliament, but a Cabal, if one were chosen; after all that Corruption of Persons, who had pre-ingenaged themselves; and after the Threatning and Turning out of all persons out of Employments, who had refused to do it; and if there are such daily Regulations made in the Towns, that it is plain those who manage them, intend at last to put such a number of men in the Corporations, as will certainly chuse the persons who are recommended to them. But above all, if there are such a number of Sheriffs and Mayors made, over England, by whom the Elections must be conducted and returned, who are now under an Incapacity by Law, and so are no Legal Officers, and by consequence those Elections that pass under their Authority are null and void: If, I say, it is clear that things are brought to this, then the Government is dissolved, because it is impossible to have a Free and Legal Parliament, in this state of things. If then both the Authority of the Law, and the Constitution of the Parliament, are struck at, and dissolved, here is a plain Subversion of the whole Government. But if we enter next into the particular Branches of the Government, we will find the like Disorder among them all.

The Protestant Religion, and the Church of England, make a great Article of our Government, the latter being secured not only of Old, by *Magna Charta*, but by many special Laws made of late, and there are particular Laws made in K. Charles the first, and the late Kings time, securing them from all Commissions, that the King can raise for Judging or Censuring them; if then in opposition to this, a Court so condemned is erected, which proceeds to Judge and Censure the Clergy, and even to disleise them of their *Freeholds*, without so much as the

form of a Tryal, tho this is the most Indispensable Law, of all those that secures the property of England; & if the King pretends that he can require the Clergy to publish all his Arbitrary Declarations, and in particular one that strikes at their whole settlement, and has ordered process to be begun against all that disobeyed this illegal warrant, and has treated so great a number of the Bishops as Criminals, only for representing to him the reasons of their not obeying him; if likewise the King is not satisfied to profess his own Religion openly, tho even that is contrary to Law, but has sent Ambassadors to Rome, and received Nuntios from thence, which is plainly Treason by Law; if likewise many Popish Churches & Chappels have been publicly opened; if several Colledges of Jesuites have been set up in divers parts of the Nation, and one of the Order has been made a Privy Counsellour and a principal Minister of State; and if Papists, and even those who turn to that Religion, tho declared Traitors by Law, are brought into all the chief Employments, both Military and Civil; then it is plain that all the rights of the Church of England, and the whole establishment of the Protestant Religion, are struck at, and designed to be overturned: since all these things, as they are notoriously Illegal, so they evidently demonstrate, that the great design of them all, is the rooting out of this Pefilent Heresy, in their stile, I mean the Protestant Religion.

In the next place, If in the whole course of Justice, it is visible, that there is a constant practising upon the Judges, that they are turned out upon their varying from the Intentions of the Court, and if men of no reputation nor abilities are put in their places; if an Army is kept up in time of peace, and men who withdraw from that Illegal Service, are hanged up as Criminals, without any colour of Law, which by consequence are so many Murders; and if the Souldiery are connived at, and encouraged in the most enormous Crimes, that so they may be thereby prepared to commit greater ones, and from single rapes and murders, proceed to a rape upon all our Liberties and

and a Destruction of the Nation. If, I say, all these things are true in fact; then it is plain, that there is such a dissolution of the Government made, that there is not any one part of it left sound and entire: and if all these things are done now, it is easy to imagin what may be expected, when *Arbitrary Power* that spares no man, and *Popery* that spares no Heretic, are finally established: Then we may look for nothing but Gabelles, Tailles, Impositions, Benevolences, and all sorts of *Illegal Taxes*; as from the other, we may expect Burnings, Massacres, and Inquisitions. In what is doing in *Scotland*, we may gather what is to be expected in *England*: where if the King has over and over again declared, that he is vested with an *Absolute Power*, to which all are bound to *obey without Reserve*, and has upon that annulled almost all the *Acts of Parliament* that passed in *K. James* the firsts minority, tho they were ratified by himself, when he came to be of Age, and were confirmed by all the subsequent *Kings*, not excepting the present. We must then conclude from thence, what is resolved on here in *England*, and what will be put in execution as soon as it is thought that the times can bear it. When likewise the whole Settlement of *Ireland* is shaken, and the *Army* that was raised, and is maintained by Taxes, that were given for an *Army of English Protestants*, to secure them from a new *Massacre* by the *Irish Papists*, is now all filled with *Irish Papists*, as well as almost all the other Employments; it is plain, that not only all the *British Protestants* inhabiting that *Island*, are in daily danger of being butchered a second time, but that the *Crown of England* is in danger of losing that *Island*, it being now put wholly into the hands and power of the *Native Irish*, who as they formerly offered themselves up sometimes to the *Crown of Spain*, sometimes to the *Pope*, and once to the *Duke of Lorrain*, so are they perhaps at this present, treating with another *Court*, for the Sale and Surrender of the *Island*, and for the

Massacre of the *English* in it.

If thus all the several Branches of our Constitution are dissolved, it might be at least expected, that one part should be left entire, and that is the *Regal Dignity*. And yet even that is prostituted, when we see a young Child put in the reversion of it, and pretended to be the *Prince of Wales*: concerning whose being born of the *Queen*, there appear to be not only no certain proofs, but there are all the presumptions that can possibly be imagined to the Contrary. No proofs were ever given either to the *Princess of Denmark*, or to any other *Protestant Ladies*, in whom we ought to repose any Confidence that the *Queen* was ever with Child; that whole matter being managed with so much mysteriousness, that there were violent and publick Suspensions of it before the Birth. But the whole Contrivance of the Birth, the sending away the *Princess of Denmark*, the sudden shortning of the reckoning, the *Queens* sudden going to *S. James's*, her no less sudden pretended delivery, the hurrying the Child into another room, without shewing it to those present, and without their hearing it cry; and the mysterious conduct of all since that time; No satisfaction being given to the *Princess of Denmark*, upon her return from the *Bath*, nor to any other *Protestant Ladies*, of the *Queen's* having been really brought to bed. These are all such evident Indications of a base Imposture, in this matter, that as the Nation has the justest reason in the world to doubt of it, so they have all possible reason to be at no quiet, till they see a *Legal and Free Parliament* Assembled, which may Impartially, and without either Fear or Corruption, examin that whole matter.

If all these matters are true in fact, then I suppose no man will doubt, that the whole Foundations of this Government, and all the most Sacred parts of it, are overturned. And as to the truth of all these Suppositions, that is left to every *Englishmans* Judgment and sense.

F I N I S.

